

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEROME TALLEY,

Plaintiff,

v.

KAREN L. STROMBOM, *et al.*,

Defendants.

CASE NO. C15-5820-MJP-MAT

REPORT AND RECOMMENDATION

On November 12, 2015, plaintiff Jerome Talley submitted to the Court for filing a new action which he identifies as one filed under Rule 60 of the Federal Rules of Civil Procedure. (*See* Dkt. 1.) Plaintiff was at that time a pretrial detainee confined in the Kitsap County Jail. Plaintiff asserts in his pleading that this is an independent action seeking to challenge all previous Reports and Recommendations issued by United States Magistrate Judges Karen L. Strombom, David W. Christel, and J. Richard Creatura. (*See id.*) Plaintiff includes in his pleading an "Affidavit of Poverty" which the Court construes as a request to proceed with this action *in forma pauperis*.

Pursuant to 28 U.S.C. § 1915(g), a prisoner may not proceed *in forma pauperis* in a civil action if he or she has, on three or more prior occasions, brought civil actions that were

1 dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon
2 which relief may be granted, unless the prisoner is under imminent danger of serious physical
3 injury. Plaintiff has had at least three prior actions dismissed as frivolous or for failure to state a
4 claim. *See Talley v. Holevinski* (E.D. Wash. Case No. 02:99-cv-5036); *Talley v. Bailey, et al.*
5 (W.D. Wash. Case No. 2:08-cv-00677-TSZ); *Talley v. Bailey, et al. (II)* (W.D. Wash. Case No.
6 2:08-cv-00752-RSM); and *Talley v. Rogers* (W.D. Wash. Case No. 2:08-cv-01761-TSZ). *See*
7 *also Talley v. Sias, et al.*, (W.D. Wash. Case No. 3:15-cv-5501-LRS).


8 Accordingly, plaintiff may not proceed with this action without prepayment of the full
9 filing fee unless he shows that he was "under imminent danger of serious physical injury" at the
10 time he signed his pleading. 28 U.S.C. § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1053
11 (9th Cir. 2007) ("[I]t is the circumstances at the time of the filing of the complaint that matters
12 for purposes of the 'imminent danger' exception to § 1915(g)."). Nothing in plaintiff's proposed
13 pleading suggests that he was under imminent danger of serious physical injury at the time he
14 filed the pleading. Plaintiff is therefore ineligible to file this lawsuit in federal court without
15 paying the \$350.00 filing fee plus a \$50.00 administrative fee (for a total of \$400.00).

16 Based on the foregoing, this Court recommends that plaintiff's request to proceed *in*
17 *forma pauperis* be denied. This Court further recommends that plaintiff be directed to pay the
18 filing fee within 30 days of the date on which this Report and Recommendation is adopted, and
19 that this action be dismissed without prejudice if plaintiff fails to do so. A proposed order
20 accompanies this Report and Recommendation.

21 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
22 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
23 and Recommendation is signed. Failure to file objections within the specified time may affect

1 your right to appeal. Objections should be noted for consideration on the District Judge's
2 motions calendar for the third Friday after they are filed. Responses to objections may be filed
3 within **fourteen (14) days** after service of objections. If no timely objections are filed, the
4 matter will be ready for consideration by the District Judge on **December 18, 2015**.

5 DATED this 25th day of November, 2015.

6
7 
8 Mary Alice Theiler
United States Magistrate Judge